IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.NO.549 OF 2007
AND
M.P.NOS.1 AND 3 OF 2007

National Bank for Agriculture &
Rural Development,
rep. by its Chief General Manager,
K.V.Raghavalu,
No.48,Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034. .. Petitioner

Vs.

1.The Commissioner,
Corporation of Chennai,
Ribbon Building,
Chennai.
2.The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
No.1,Gandhi Irvin Road,
Egmore,
Chennai-600 008.
3.M.Kesavan
4.M/s.ENVEE Enterprises,
A partnership Firm
rep. by its Managing Partner
M.V.Maniprakash,
Old No.24, New No.39,
Alagesan Road,
Vedachalam Nagar,
Chengalpattu .. Respondents

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This writ petition has been preferred under Article 226 of the Constitution of India praying for the issue of a writ of Declaration declaring that the South West Corner and the North east Corner of the lands shown in the planning permit No.1788/B/28A/C/86, dated 21.2.1986 issued by the second respondent and from interfering with the convenient enjoyment of the petitioner as provided in the planning permit issued by the second respondent.

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For Petitioner : Mr.K.M.Vijayan, SC
for Mr.K.Sukumaran

For Respondents: Mr.T.Mathi for R1
Mr.C.Kathiravan for R2
Mr.M.Sathyanarayanan for R3
Mr.AL.Somayajulu, SC
for Mr.M.Md.Ashraf Ali for R4

ORDER

Invoking the writ jurisdiction of this court, the petitioner though originally sought for a declaratory relief, subsequently has amended the same to one of mandamus, forbearing the respondents in any manner altering or modifying the total land space, extent as per the planning permit No.1788/B/28A/C/86, dated 21.2.1986 issued by the second respondent and from interfering with the convenient enjoyment of the petitioner as provided in the planning permit issued by the second respondent.

2.The affidavit filed in support of the writ petition is perused. The court heard Mr.K.M.Vijayan, the learned Senior Counsel appearing for the petitioner and also Mr.T.Mathi, learned counsel appearing for R1, Mr.C.Kathiravan for R2, Mr.M.Sathyanarayanan for R3 and Mr.AL.Somayajulu, the learned Senior Counsel appearing for the 4th respondent.

3.The following facts would emerge as admitted. An agreement of sale was entered into by the petitioner with the respondents 3 and 4 as owners and Developers respectively in respect of 8 grounds and 1023 sq.ft. and to construct residential buildings over the said land as per the specifications of the petitioner, the fourth respondent, as developer, prepared a scheme for the development of the said property and construction of residential buildings. Accordingly, a plan was prepared and the same was approved by the respondents 1 and 2 on 20.1.1982 under sanction orders B.A.No.12/82 and PPA No.4/82 respectively. As desired by the petitioner, the fourth respondent completed the construction and vacant possession of the flats were handed over to the petitioners on 9.1.1987 along with site of 8 grounds and 1023 sq.ft. Thus, the respondents 3 and 4 have performed their obligation under the agreement, referred to above.

4.While the matter stood thus, the fourth respondent filed C.S.No.753 of 1990 for specific performance of the agreement in respect of the land to an extent of 10 grounds and 1750 sq.ft. against the third respondent and his wife on the basis of an agreement entered into between them on 8.5.1984. Pending same, an application in A.No.1615 of 1996 was filed by the petitioner to implead itself as a party and the same was also ordered. While the matter stood thus, the petitioner also filed a suit in C.S.No.736 of 1999 for specific performance of agreement, dated 10.5.1984. Accordingly, both the suits were taken up for trial together. There was a joint memo of compromise filed by the parties and the same was recorded. Accordingly, compromise decree came to be passed. In C.S.No.753 of 1990, no relief was granted against the petitioner,

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since the relief to an extent of 2800 sq.ft. was passed in C.S.No.736 of 1999. Following the same, the fourth respondent has made payment as per the decree to the third respondent and got the sale deed executed in their favour. Therefore, to an extent of 2 grounds and 879 sq.ft. in the north east and south west corner and for the entire extent of 10 grounds and 1750 sq.ft., the writ petition has been brought forth, alleging that it is in the possession of the petitioner and it is sought to be interfered with by the respondents 3 and 4 and under these circumstances, they have got to be restrained. Originally, a declaratory relief was sought for and subsequently, it was one amended for the relief of mandamus and therefore, to restrain the respondents from altering or modifying the total land space, as referred to above, this writ petition has been preferred.

5.Advancing his arguments on behalf of the petitioner, the learned Senior Counsel would submit that in the instant case, pursuant to the agreement entered into between the petitioner on one side and the respondents 3 and 4, owners and developers, on the other side, a plan was submitted for approval before the respondents 1 and 2 on 20.1.1982. It is true, the residential buildings are to be constructed and as understood between the parties, it was 33 in number and that would cover 8 grounds and 1023 sq.ft. But, the entire plan was placed before the authority for an entire extent of 10 grounds and odd. Thus, once the plan has been prepared, the respondents 3 and 4, as the owner and also developer respectively, have also affixed their signature and the same has been placed for approval. Under these circumstances, they should not be allowed to interfere with the possession of the petitioner.

6.The learned counsel would further add that the 2 grounds and odd would form part of the sanctioned plan. Once the plan has been placed, approved and sanctioned and it was also to construct the 33 residential flats, it should be for the benefit of the petitioner. Apart from that once the 2 grounds and 879 sq.ft. forms part of the plan, which was placed for approval, in which the respondents 3 and 4 were also a party, they cannot be allowed to say that they are the owners of the property or they are in possession of the property and hence, the attempted interference has got to be stopped. Even if any plan is placed for approval before the respondents 1 and 2 in respect of any construction to be made on the alleged extent of 2 grounds and 879 sq.ft., it should not be allowed, since it was not only detrimental to the interest of the petitioner, but also it was against the plan originally placed, approved and sanctioned by the respondents 1 and 2 and under these circumstances, a writ has got to be issued in favour of the petitioner. In support of his contention, the learned Senior Counsel has relied on the decision of this court reported in 2007 (1) MLJ 856 (SASHIKALA REP. BY HER POWER AGENT K.SRIDHARAN, CHENNAI VS. S.A.SAHIDA BEEVI AND OTHERS) to the effect that though the plan has been placed and approved by the authority, not mentioning of the vacant site and it is also a part and parcel of the scheme, all the flat owners are entitled to use the same and hence, the non-mentioning of the vacant site in the sale deed will not in any way affect the right of the flat owners.

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7.The learned Senior Counsel appearing for the 4th respondent and the learned counsel appearing for respondents 1 to 3 are heard.

8.The learned Senior Counsel appearing for the 4th respondent, opposing all the contentions put forth by the petitioner's side, would submit that in the instant case, the writ petition itself is not maintainable. Originally, it is true, there was an agreement between the petitioner and the respondents 3 and 4, but it would cover only 8 grounds and odd. It is pertinent to point out that two suits were filed. One suit was filed by the petitioner for specific performance in respect of 8 grounds and odd, while the 4th respondent filed a suit against the third respondent for the entire extent of 10 grounds and odd. There was a compromise decree. It is pertinent to point out that the petitioner herein was also a party to the suit and the compromise decree would clearly reveal that the property also include the schedule of property and the schedule of property is exactly the subject matter of the writ petition. In the compromise memo, it was also made clear that the 4th respondent was in possession of the property in question. Under these circumstances, it would be futile on the part of the petitioner to state that the petitioner is in possession of the property.

9.The learned counsel would further add that in the instant case, even from the averments in the affidavit, it would be quite clear that the petitioner has approached the respondents 3 and 4 for the purchase of the property, but the same was not fructified. Further, after becoming a party to the suit and after signing in the compromise memo, where specific performance in respect of the property in question was granted in favour of the fourth respondent and the third respondent was also directed to execute the sale deed, the petitioner cannot be allowed to say that he is either the owner of the property or he is in possession of the property or his possession is likely to be interfered with. Even assuming that the alleged possession of the petitioner is likely to be interfered with, the remedy open to the petitioner is not before the court of writ jurisdiction, but he has to approach the court of civil law. Under these circumstances, the writ petition has got to be dismissed.

10.The learned Senior Counsel for the 4th respondent would further add that the decision of this court, as referred to by the petitioner, is not applicable to the present facts of the case. Even assuming that there is any attempted interference, there is no impediment for the petitioner to make a complaint, by applying the particular enactment and he should not have approached this court by way of the writ petition and that neither writ petition is maintainable nor the relief asked for could be granted and hence, the writ petition has got to be dismissed.

11.The court has paid its anxious consideration on the submissions made and also looked into the materials available. After doing so, the court is afraid whether the relief as asked for by the petitioner could be granted. It is not in controversy that there was an agreement entered into between the petitioner on one side and the respondents 3 and 4, as the owner and developer respectively, on the other side for construction of 33 flats, which would cover 8 grounds and 1023 sq.ft. Accordingly, constructions were made and the entire

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consideration was passed. The respondents 3 and 4 have handed over the possession of 8 grounds and 1023 sq.ft. Added circumstance in the instant case was the suit filed by the petitioner against the respondents in C.S.No.736 of 1999. It is not in controversy that it was a suit filed by the petitioner for specific performance in respect of only 8 grounds and 1023 sq.ft. and nothing more. Further, another suit was filed by the 4th respondent against the third respondent in C.S.No.753 of 1990, seeking for the relief in respect of the entire property of 10 grounds and 1750 sq. ft. When both the suits were taken up for joint trial, a compromise memo was filed by the parties. It is pertinent to point out that the petitioner herein was also a party to the compromise memo. A perusal of the compromise memo, a copy of which is placed in the hands of this court, would indicate that the property, which is the subject matter of the writ petition before this court, was actually shown to be in possession of the 4th respondent. Under these circumstances, it would be highly difficult to accept the plea of the petitioner that he is in exclusive possession of the property.

12.Apart from that, what is all pleaded is the attempted interference. The petitioner has claimed that he is in possession of the property and any attempted interference would be in contravention of the plan originally placed by the respondents 3 and 4 and also approved by the sanctioning authority, namely respondents 1 and 2. At this juncture, it is to be pointed out that once there is attempted interference of the alleged possession of the petitioner, it has got to be stated that the writ jurisdiction is not the forum to get the remedy, but the petitioner has to approach the proper forum for the alleged act. In a given case like this, if there is any construction is attempted to be made and that too in a part and parcel of the land, which is originally found in the plan placed, approved and sanctioned by the sanctioning authority, the petitioner can well place a complaint before the proper forum for necessary action in this regard. At this juncture, it is to be pointed out that it is only an apprehension and that the relief asked for is only anticipatory in nature. Under these circumstances, in this regard also, the relief of mandamus could not be granted. Therefore, the petitioner is at liberty to approach the proper forum for appropriate relief, if and when necessity arises. Any observations made by this court, as recorded above, will not in any way prevail upon the authority, before whom the remedy is sought for. Accordingly, this writ petition is disposed of. No costs. Consequently, the connected MPs are closed.

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Asst. Registrar.

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Sub Asst. Registrar.

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To

1.The Commissioner,
  Corporation of Chennai,
  Ribbon Building,
  Chennai.

2.The Member Secretary,
  Chennai Metropolitan Development Authority,
  Thalamuthu Natarajan Building,
  No.1,Gandhi Irvin Road,
  Egmore,
  Chennai-600 008.

+ 1 CC To Mr. M.Md.Ashrat Ali, Advocate SR NO.69190

+ 1 CC To Mr. C.Kathiravan, Advocate SR NO.69072

+ 1 CC To Mr. T.Mani, Advocate SR NO.69105

+ 1 CC To Mr. K.Sukumaran, Advocate SR NO.68925

+ 1 CC To Mr. M.Sathyanarayanan, Advocate SR NO.68852

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